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COPY

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

April 3, 2003

Zach Miller
Davis, Graham & Stubbs, LLP
370 17th Street
Denver, CO 80201-0185

Re: CO/AOC for Georgetown Canyon SI/EECA

Dear Zach,

Please find enclosed an initial draft of the CO/AOC for the Georgetown Canyon Mine Site. Rick Clegg, under separate cover will be sending a copy of the Scope of Work to your project managers for their review. This is a preliminary draft which has been reviewed by the various attorneys for the Federal agencies and the Shoshone Bannock Tribe. However, there may be additional changes requested by these parties upon completion of their full review. We are sending this to you at this time in order to begin discussions concerning this site so that work may begin as soon as possible.

I look forward to discussing this with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Darrell G. Early".

Darrell G. Early
Deputy Attorney General

DGE/kma
Enc.

cc: Fred Phillips
Jeanette Wolfly
Elizabeth McKenna
Rick Clegg
Tiffany Floyd

USEPA SF



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IN THE MATTER OF:

Nu-West Industries, Inc.
Respondent.

Initial State Draft-1/24/03
Revision 0

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I. INTRODUCTION

1.1 This Consent Order ("CO") is entered into voluntarily by the Idaho Department of Environmental Quality ("IDEQ"); the United States Department of Agriculture, Forest Service ("Forest Service"); the Department of the Interior, Fish and Wildlife Service ("FWS"), and Bureau of Indian Affairs ("BIA"); and the United States Environmental Protection Agency ("EPA"), collectively the "Federal Agencies," and the Shoshone-Bannock Indian Tribes ("Tribes"), and Nu-West Industries, Inc. ("Nu-West"), the latter as Respondent.

1.2 This CO provides for the performance by Nu-West of a Site Investigation ("SI") and Engineering Evaluation/Cost Analysis ("EE/CA") for the Georgetown Canyon Mine Site ("Site") and the reimbursement by Nu-West of response costs incurred by the IDEQ, Federal Agencies and Tribes in connection with this AOC. The Site is located on lands that are under the custody, jurisdiction or control of the State of Idaho and partly on land that is under the custody, jurisdiction or control of the Forest Service. More detailed descriptions of the Site are provided in Sections IV and V of this AOC ("Definitions" and "Findings of Fact", respectively). The work required for performance of the SI and EE/CA at the Site is specified in Appendix 1 to this AOC, and is governed by Section IX of this AOC ("Work to be Performed").

1.3 Data relevant to the SIs may be available from work undertaken as part of the Area-Wide Investigation contemplated by the Memorandum of Understanding ("MOU") between the IDEQ, EPA, the Forest Service, the United States Department of Interior ("USDOl") (the Bureau of Land Management ("BLM"), FWS, the Bureau of Indian Affairs ("BIA")), and the Shoshone-Bannock Tribes ("Tribes") (July 17, 2000), attached as Appendix 2, and the Area Wide Investigation CO/AOC (July 20, 2001) ("AWAOC"), attached as Appendix 3, as well as from other sources. This CO is intended to be implemented consistently with the MOU and AWAOC.

1.4 The Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice has approved of and concurred in this agreement, in accordance with the requirements of Section 4 of Executive Order 12580.

II. JURISDICTION

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2.1 This CO is entered into by the Governmental Parties pursuant to the authorities set forth in Appendix B to the July 2000 MOU

2.2 Without admitting any liability, Nu-West agrees to the terms and conditions of this CO without the issuance of a Notice of Violation or the holding of a compliance conference under applicable Idaho law.

2.3 In any action to enforce the terms of this CO, the Parties agree not to contest its validity or the authority and jurisdiction of the IDEQ, the Forest Service or the EPA to issue and enforce this CO, and the Parties agree to comply with and be bound by the terms and conditions of this CO. In addition, the Parties agree not to contest the authority and jurisdiction of the IDEQ, EPA and FWS to enforce the provisions in Section XXIV of this CO related to response costs. By signing this CO, however, Nu-West does not concede or waive its right to object to the authority of the United States or the IDEQ to issue, take, or enforce any other order or action relating to this Site.

III. PARTIES BOUND

3.1 This CO shall apply to, and be binding upon the IDEQ, the Forest Service, EPA and upon Nu-West and its officers, employees, agents, successors and assigns. Any change in ownership or corporate status of Nu-West including, but not limited to, any transfer of assets or real or personal property shall not alter Nu-West's obligation to comply with the requirements of this CO or to ensure compliance by any successor or assign of Nu-West, regardless of whether Nu-West continues to exist following such transaction. The signatories to the CO certify that they are authorized to execute and legally bind the Parties they represent to this CO.

3.2 Nu-West shall provide a copy of this CO and all of its Appendices to each contractor, subcontractor, laboratory, and consultant retained to perform Work under the CO within fourteen (14) days after the effective date of this CO or the date of retaining their services, whichever is later, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this CO and its Appendices. Notwithstanding the provisions of any such contract, however, Nu-West is, and shall remain, responsible for compliance with this CO.

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IV. DEFINITIONS

4.1 Unless otherwise expressly provided herein, terms used in this CO that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this CO or in the attached Appendices, the following definitions shall apply:

"CO" shall mean this Consent Order and all attached Appendices. In the event of a conflict between this CO and any Appendix, this CO shall control.

"BLM" shall mean the United States Department of the Interior, Bureau of Land Management.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than Saturday, Sunday, or a Federal holiday. In computing any period of time under this CO, where the last day falls on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"Deliverable" shall mean the documents identified in paragraph 9.7 that Nu-West must submit pursuant to this CO, and any additional documents identified in writing by IDEQ under Section XXI of this CO. All Deliverables under this CO are subject to review, comment, and approval as described in Paragraph 9.10 of this CO.

"DOI" shall mean the United States Department of the Interior.

"Effective date of this CO" shall mean the date on which the CO has been executed by all Parties and concurred in by the Department of Justice.

"EPA" shall mean the United States Environmental Protection Agency.

"EPHA" shall mean the Idaho Environmental Protection & Health Act, Idaho Code §§ 39-101 to 39-130.

"Forest Service" shall mean the United States Department of Agriculture Forest Service;

"FWS" shall mean the United States Department of the Interior, Fish and Wildlife Service;

"HWMA" shall mean the Hazardous Waste Management Act of Idaho, Idaho Code §§ 39-

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4401 to 39-4432.

"Lead Agency or Agencies" shall mean the agencies that provide the On Scene Coordinator(s) to direct the Work under this CO.

"MOU" shall mean the July 2000 "Memorandum of Understanding Concerning Contamination from Phosphate Mining Operations in Southeastern Idaho" between several federal agencies (Forest Service, EPA, BLM, BIA and FWS), IDEQ and the Shoshone-Bannock Tribes.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300, and amendments thereto.

"Natural Resource Damages" or "NRD" shall mean damages for harm to federal, state or tribal natural resources which the United States, the State and/or the Tribes has the authority to seek pursuant to common law, state statutory law, or federal statutory law, including CERCLA and the Clean Water Act, 33 U.S.C. § 1251 et seq.

"Pollutant and/or deleterious materials" shall mean materials currently defined under Idaho law and regulation as such. Use of the term "pollutant and/or deleterious materials" in this CO in connection with any of the federal entities shall not be construed as extending the entities' jurisdiction to those materials.

"Site" shall mean the Georgetown Canyon Phosphate Mine approximately 5 miles east of Georgetown, Idaho, including the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for response action implementation. The Site occurs primarily on State and Private lands although the Site is partially located on National Forest System land on the Caribou/Targhee National Forest leased to Nu-West by the United States. The Site is further described on the maps attached to this AOC as Appendix 2, which is incorporated by reference into this AOC.

"State" shall mean the State of Idaho, including its departments, agencies and instrumentalities.

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1 "Statement of Work" or "SOW" shall mean the documents that outline the Work to be performed
2 by Nu-West to implement these site investigations and to satisfy the requirements of this CO, as set forth
3 in Appendix 1 of this CO, and any modifications made thereto in accordance with Section XXV of this CO.

4 "Support Agency" means an agency that provides a support agency coordinator or project
5 manager to furnish necessary data to IDEQ, review response data and documents, and provide other
6 assistance as requested by the OSC. The Bureau of Land Management has declined Support Agency
7 status for Georgetown Canyon Mine. All other Federal Agencies have retained Support Agency status
8 for the Site.

9 "Tribes" shall mean the Shoshone-Bannock Indian Tribes residing on the Fort Hall reservation
10 near Pocatello, Idaho.

11 "United States" shall mean the United States of America, including its departments, agencies and
12 instrumentalities.

13 "USDA" shall mean the United States Department of Agriculture.

14 "Work" shall mean all tasks that Nu-West is required to perform pursuant to this CO, and its
15 attached Appendices, and all Deliverables produced pursuant to this CO.

16 V. FINDINGS OF FACT

17 5.1 The Site is located in Caribou County, Idaho primarily on State and private lands, although
18 federal leases occur partially on National Forest System land. The IDEQ exercises jurisdictional
19 control over environmental issues in the State of Idaho and on State- and privately-owned lands;
20 the Forest Service exercises jurisdiction, custody and control over National Forest System lands
21 on behalf of the United States and BLM exercises jurisdiction, custody and control over Federally-
22 owned public lands.

23 5.2 The Georgetown Canyon Mine is located in Township 10 South, Range 45 East (Sections 5, 8,
24 12, 17-20 and 30); Township 10 South, Range 44 East (Sections 24, 25 and 36); and Township
25 11 South, Range 44 East (Sections 1, 2, 12 and 13) approximately 30 miles southeast of Soda
26 Springs. Mining activities at the site were conducted under 16 placer mining claims patented
27 between 1912 and 1915 (Patent # 245166, 483955, 483956, 488040, 548595 and 548596). The

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claims were consolidated by Stockholders Syndicate and sold to Central Farmers Fertilizer Company in 1955. Central Farmers constructed a processing facility at the Site in 1959 and performed open pit surface mining and ore processing from 1959 through 1964. No phosphate ore has been produced at the Site since 1964, however, the Site has changed primary ownership a number of times. The Site was acquired by Nu-West in 1995.

5.3 The Site consists of two north-south limbs connected by property occupied by the former industrial facility. Mining occurred primarily on the east limb and focused on the upper ore bed. The site drains into Georgetown Canyon and contributes runoff to Georgetown Creek, which is designated as a Special Resource Water by the State of Idaho.

5.4 The industrial portion of the Site is subject to a separate State Consent Order for the closure of the former industrial facility. This activity addresses the historic furnace building, phosphorus ponds, product tanks, underground storage tank releases and observed transformer oil spills discovered during demolition activities.

5.5 Historic mining activities at the Site have included the construction of waste rock and overburden piles comprised of middle waste shales high in naturally-occurring concentrations of selenium and other mining-related trace metals. Sampling results from the Area Wide Investigations performed since 1996 indicate elevated levels of associated constituents in waste rock soils, vegetation, surface water units and other various abiotic/biotic media at the Site. Potential selenium-related livestock deaths also occurred in the vicinity of Site waste rock piles in 1999.

5.6 Pursuant to the July 2000 MOU between the Federal Agencies, IDEQ and the Shoshone Bannock Tribes, the IDEQ is the lead agency for conducting response actions at the Site.

5.7 Selenium and other hazardous and deleterious substances have been detected above background concentrations in monitoring and sampling conducted at the Site by Nu-West under the Record of Decision signed in 1983 that permitted mining on the Federal Phosphate Leases. Subsequent sampling conducted by the Forest Service, BLM, their contractors, and the University of Idaho indicate that selenium and other hazardous and deleterious substances are being leached from waste rock at the site into the environment, and may be impacting vegetation and surface water.

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5.8 As stated in the AWAOC, the parties intend that Work accomplished in accordance with this site-specific CO will be closely coordinated with the Area-Wide investigation.

5.9 Subject to paragraph 6.1, and based on the Findings of Fact set forth above in paragraphs 5.1-5.7, and the Administrative Record supporting this removal action, the IDEQ, Forest Service, and EPA, make the determinations in paragraphs 5.10.1 through 5.10.9.

5.10.1 The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

5.10.2 The contaminants found at the Site, including selenium and other hazardous substances, are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and are "hazardous and deleterious materials" subject to the provisions of IDAPA 58.01.02.800, or are otherwise "pollutants" as defined by IDAPA 58.01.02.003.78.

5.10.3 There has been actual or threatened "release," as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of one or more hazardous substances from the facility.

5.10.4 There has been an actual discharge, as defined in IDAPA 58.01.02.003.25, of one or more pollutants or hazardous or deleterious materials from the facility to waters of the State of Idaho.

5.10.5 Nu-West is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21) and IDAPA 58.01.02.003.74.

5.10.6 Nu-West is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as a past and/or current owner and/or operator of the Site and/or as a person who arranged for the disposal of hazardous substances at the Site.

5.10.7 Nu-West is liable to the State of Idaho under IDAPA 58.01.02.080.01.a-b. as a result of discharge to waters of the State of pollution and/or hazardous and deleterious materials.

5.10.8 The actual or threatened release of pollutants, hazardous substances and/or deleterious materials from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a) or will otherwise injure designated beneficial uses of waters of the State within the meaning of IDAPA 58.01.02.080.01.b.

5.10.9 The Work to be performed under this CO is necessary to protect public health, welfare or

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the environment, will be consistent with CERCLA, the NCP, EPHA, and HWMA, and will expedite effective response actions, and is in the public interest.

VI. COLLATERAL USE OF THIS CO

6.1 Except as set forth in paragraph 2.3, nothing in this CO shall constitute or be construed as an admission of liability or fact by any of the Parties. Specifically, Nu-West does not admit any responsibility or liability to, or the findings of fact, conclusions of law, or determinations made by the Forest Service, EPA, the United States, the IDEQ, or any other party for the presence or sources of hazardous or deleterious substances at the Site, or arising out of or relating to the Site or the matters described herein, nor does it acknowledge or concede that any release or threatened release of hazardous substances at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment. The United States, including its agencies, and the IDEQ similarly do not admit any liability arising out of or relating to the Site or otherwise waive any provisions of the July 2000 MOU relating to liability or jurisdiction. None of the provisions of this CO shall be admissible in evidence in any proceeding, other than in a proceeding to enforce this CO or any judgment related to it, or for the purpose of demonstrating the consistency of the actions taken under this CO with the NCP and CERCLA, and/or the EPHA and HWMA.

VII. ORDER

7.1 Based upon the foregoing provisions of this CO, and the Administrative Record for the Site, it is hereby ordered and agreed that Nu-West shall comply with the provisions of this CO, including but not limited to all Appendices to this CO and documents incorporated by reference into this CO, and perform the actions required in this CO.

VIII. ON-SCENE COORDINATOR/PROJECT COORDINATOR

8.1 IDEQ has been designated the Lead Agency for the Site pursuant to the MOU. IDEQ, as the Lead Agency for the Site, will coordinate with USFS, USFWS, , BIA, Sho-Ban Tribes and EPA as support agencies pursuant to the MOU. IDEQ will appoint an On-Scene Coordinator ("OSC"). The initial OSC for the Site is:

Richard Clegg

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Department of Environmental Quality
15 West Center
Soda Springs, Idaho 83276
Phone: (208) 547-1940
FAX: (208) 547-3989
E-Mail: rclegg@deq.state.id.us

Nu-West has designated as the Project Coordinator for the Site:

Scott B. Sprague, P.E.
Agrium U.S. Inc.
3010 Conda Road
Soda Springs, ID 83276
Phone: 208-547-4381 Ext 265
Fax: 208-547-2423
Cell: 303-883-1184
E-mail: ssprague@agrium.com

8.2 The OSC and the Project Coordinator shall be responsible for overseeing implementation of the Work and/or activities required at the Site under this CO. All written communications between the Parties concerning implementation of this CO shall be directed to the OSC or Project Coordinator, by regular or overnight mail or by facsimile, with copies to such other persons as the Parties reasonably designate. The Parties may change their respective OSC/Project Coordinator and shall notify each other in writing at least five (5) days prior to any such change.

8.3 Deliverables and other written communications submitted under this CO shall be sent to the following persons:

For the IDEQ: the OSC designated in paragraph 8.1.

For the Forest Service: (Enoch Valley Mine Site Only)

Jeff Jones
US Forest Service
421 West 2nd South
Soda Springs, Idaho 83276
Phone: (208) 547-4356
Fax: (208) 547-1112
E-mail: jjones13@fs.fed.us

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For FWS:

Susan Burch, Contaminants Specialist
USFWS - Idaho Snake River Basin Office
1387 S. Vinnell Way
Room 368
Boise, ID 83709
Phone: (208) 378-5243
Fax: (208) 378-5262
E-mail: susan_burch@fws.gov

For EPA:

Matt Wilkening
1435 N. Orchard St.
Boise, ID 83706
Phone: (208) 378-5760
Fax: (208) 378-5744
E-mail: wilkening.matt@epa.gov

For the BIA:

Dean Fox
BIA-Fort Hall Agency
Admin Bldg 606 Bannock Ave, Rm 210
Fort Hall, Idaho 83203
Phone: (208) 238-2312
Fax: (208) 238-1310
E-mail: deanfox@bia.gov

For the Tribes:

Christina Cutler
Shoshone-Bannock Tribes
PO Box 306
Fort Hall, Idaho 83203
Phone: (208) 238-5372
Fax: (208) 237-0797
e-mail: ccutler@shoshonebannocktribes.com

For Nu-West: the Project Coordinator designated in paragraph 8.1.

8.4 The OSC shall have the authority vested in the OSC by the EPHA, the HWMA, and other applicable law. Absence of the OSC from the Site shall not be cause for stoppage of Work unless specifically directed by the OSC.

IX. WORK TO BE PERFORMED

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194 9.1 Nu-West agrees to perform a Site Investigation ("SI") and an Engineering Evaluation and
195 Cost Analysis ("EE/CA") at the Site, consistent with the attached Site Specific SOW.

196 9.1.1 The general objective of the SI is to determine the scope of any release or
197 threatened release of hazardous substances, pollutants and/or deleterious materials to the environment
198 at or from each individual Mine Site. The SI shall consist of sampling and monitoring, including the
199 preparation of reports, as set forth in the SOW. Some sampling and monitoring has already been
200 conducted at the Site, including that done in connection with the AWOC. The SOW shall describe the
201 Work necessary, in addition to those activities, to perform the SI for the site. Nu-West shall perform the
202 SI in accordance with the applicable SOW.

203 9.1.2 The general objective of the EE/CA for the Site is to identify and evaluate
204 removal action requirements and alternatives designed to prevent, mitigate, or otherwise respond to or
205 remedy any release or threatened release of hazardous substances, pollutants and/or deleterious
206 materials at the Site in accordance with the NCP, 40 C.F.R. § 300.415, and applicable state law. Nu-
207 West shall perform the EE/CA in accordance with the SOW for the Site (Appendix 1). The EE/CA shall
208 include, but are not limited to, the following:

209 9.1.2.1 An identification of removal action objectives, as more specifically set forth in
210 the SOW and EPA's Guidance on Conducting Non-Time Critical Removal Actions Under CERCLA, Office
211 of Solid Waste and Emergency Response ("OSWER") Directive No. 9360.0-32, August 1993;

212 9.1.2.2. An identification and comparative analysis of removal action alternatives,
213 including an analysis of their effectiveness, cost, and ability to be implemented, as more specifically set
214 forth in the SOW and OSWER Directive No. 9360.0-32; and

215 9.1.2.3 A recommended action alternative identified by IDEQ.

216 9.2. All Work to be performed under this CO shall be under the direction and supervision of
217 qualified personnel of Nu-West or its consultants with experience in CERCLA investigations and response
218 actions. Nu-West shall notify IDEQ of its qualifications or the name and qualifications of any contractors
219 or subcontractors retained to perform the Work under this CO at least 15 days prior to commencement of
220 such Work. IDEQ retains the right to disapprove of any, or all, of the contractors and/or subcontractors

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retained by Nu-West, or of Nu-West's choice of itself to do the Work. If IDEQ disapproves of a selected contractor or Nu-West's choice of itself, Nu-West shall retain a different contractor or notify IDEQ that Nu-West will perform the Work in place of the disapproved contractor, within 30 days following IDEQ'S disapproval. Nu-West shall notify IDEQ of that contractor's name and the qualifications of the contractor or Nu-West within that same time.

9.3 All samples analyzed shall be analyzed by a laboratory that participates in a Quality Assurance/Quality Control program equivalent to that specified in the guidance documents listed in section ____ of the SOW.

9.4 All Work under this CO shall be conducted consistently with CERCLA, the NCP, EPHA, HWMA, and applicable guidance documents. The OSC will provide Nu-West with copies of the relevant guidance documents upon request. All Work performed by and for Nu-West in compliance with the requirements of this CO, its Appendices, or the Deliverables specified in paragraph 9.9, infra, and approved by IDEQ, shall be deemed to be necessary and consistent with CERCLA, the NCP, EPHA and HWMA.

9.5 During performance of the Work required under this CO, Nu-West shall provide IDEQ with data and Deliverables as described below and/or in the SOW. A schedule for submittal of the Deliverables is contained in the attached SOW. Upon the written request of the OSC, Nu-West shall provide IDEQ with non-validated analytical data within thirty (30) days of receiving such data. Nu-West shall also notify IDEQ in writing of the seasonal completion of field activities within seven (7) days of the date of completion.

9.6 The documents required under this CO to be prepared, submitted for approval, and implemented by Nu-West shall be known as "Deliverables." For the purposes of this CO, Deliverables shall include the SI/EE/CA Work Plans, the Sampling and Analysis Plans (SAPs), the Draft SI Report, the Final SI Report, the Draft EE/CA Report, and the Final EE/CA Report for the site. These Deliverables are described more fully below:

9.6.1 SI/EE/CA Work Plan. Nu-West shall submit and implement a complete SI/EE/CA Work Plan that satisfies the SOW.

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9.6.2 Sampling and Analysis Plans (SAPs). Nu-West shall submit and implement a

SAP for the Site that includes a site health and safety plan (HASP), quality assurance project plan (QAPP) and field sampling plan (FSP) covering all Work under this CO. These plans shall be consistent with the NCP, any applicable state regulations, and any applicable EPA guidance including EPA's current Standard Operating Safety Guides (EPA Publication 9285:1-03, PB92-963414, June 1992). In addition, the HASPs shall comply with all applicable occupational safety and health regulations. Also, the FSP and QAPP for each site will include procedures for collecting, transporting and analyzing all samples collected at the Site, as well as procedures for quality assurance/quality control ("QA/QC"). These procedures shall be consistent with 40 C.F.R. § 300.415(b)(4)(ii) and EPA Requirements for Quality Assurance Project Plans, EPA QA/G 5. The SAP shall identify laboratories to be used during performance of the Work of this CO.

9.6.3 SI Report: Nu-West shall submit an SI Report for the Site that describes the

implementation and results of the sampling and analysis required in the SI Work Plan, including modifications approved by IDEQ, if any, made during the implementation. The final report shall include: documentation of the conditions encountered during well installation; development logs; a description of the sampling procedures completed; a presentation of the analytical results of all sampling and analyses performed; and appendices containing all relevant documentation generated during the monitoring, including, without limitation, manifests, chain of custody, sampling data sheets, laboratory results, permits, and pertinent portions of the work performed pursuant to the AWAOC, which may be incorporated by reference into the SI Report.

9.6.4 EE/CA Report. Nu-West shall submit a report for the Site documenting

implementation of the EE/CA Work Plan, including modifications approved by IDEQ, as provided herein, if any, during the implementation. The final report shall contain a detailed analysis of removal alternatives, a recommendation for the selection by IDEQ of a removal alternative, and a detailed justification for the recommendation, as described in paragraph 9.1.2 of this section, the SOW and the EE/CA Work Plan.

9.7 All Deliverables shall be submitted initially by Nu-West in draft form, in accordance with the schedule provided in paragraph 9.9 of this section, or as otherwise established by IDEQ OSC, and

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275 are subject to review, comment, and written approval or disapproval by IDEQ. IDEQ agrees to
276 consolidate any comments received from support Agencies and to provide a single set of instructions to
277 Nu-West. Within thirty (30) days of Nu-West's receipt of the comments from IDEQ on each draft
278 document, Nu-West shall amend and submit a revised document to IDEQ that incorporates all comments
279 and corrects all deficiencies identified by IDEQ, unless such comments have been revised or withdrawn
280 in writing. Deliverables approved by IDEQ shall be incorporated herein, shall be enforceable as a part of
281 this CO, and may be modified only upon the written approval of IDEQ. IDEQ may also approve a
282 Deliverable with modifications. Once approved the Deliverable shall be incorporated herein, shall be
283 enforceable as part of this CO, and may be modified only upon written approval of IDEQ.

284 9.8 The Deliverables shall be submitted to IDEQ in accordance with the schedule set forth
285 in section ____ of the SOW.

286 9.9 The absence of written comments by IDEQ in response to the submission of any
287 Deliverable by Nu-West pursuant to this CO shall not be construed as approval of the Deliverable under
288 this CO.

289 9.10 Nu-West shall not implement the actions described in a Deliverable in connection with
290 any Work at the Site until it receives written approval of the Deliverable from IDEQ. Each Deliverable
291 approved in writing by IDEQ shall be incorporated by reference into this CO. All Work performed
292 pursuant to this CO shall be in accordance with approved Deliverables, unless otherwise authorized in
293 writing by the OSCs. Failure to materially comply with any provision of an approved Deliverable shall be
294 considered a violation of this CO.

295 9.11 Unless the OSC authorizes a smaller number in writing, Nu-West shall provide to IDEQ
296 an electronic copy and five (5) paper copies of each draft and final Deliverable, including one unbound
297 copy. Nu-West shall also provide one copy to each Support Agency listed in paragraph 8.3 of this CO.
298 All reports, maps and supporting information shall be provided in readily reproducible form.

299 9.12 IDEQ will prepare a Community Relations Plan for the Nu-West Site in accordance with
300 applicable EPA guidance and the NCP. Nu-West shall provide information and otherwise cooperate in
301 support of the preparation and implementation of the Community Relations Plan.

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9.13 Upon request by IDEQ, Nu-West shall provide copies of plans, task memoranda, field modifications, recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other documents generated in connection with the Work performed under this CO. Any claim that Nu-West need not disclose such materials based on a claim of privilege shall be governed by paragraphs 18.3 and 18.4 of this CO

X. ADMINISTRATIVE RECORD

10.1 IDEQ shall determine the initial contents and location of the administrative record for the Site. Nu-West may submit to IDEQ for consideration for inclusion in the record any records, reports, data, documents, photographs, or other information or materials prepared, discovered, relied on, or otherwise generated or used in connection with Nu-West's performance of Work under this CO. However, nothing in this paragraph shall be deemed to limit or affect the lawful discretion of IDEQ to determine the contents of the administrative record.

10.2 IDEQ retains the responsibility for releasing to the public the one or more EE/CA Reports and any decision documents for the Site. IDEQ will, after providing opportunity for public comment on any EE/CA Report, in accordance with 40 C.F.R. §§ 300.415 and 300.820, select a removal alternative that IDEQ determines is appropriate for each Site. The selection of a removal action by IDEQ is governed by Section 113(h) and (j) of CERCLA and shall not be subject to the dispute resolution procedures of this CO. Nothing in this CO shall be deemed to obligate Nu-West to perform or take any action pertaining to the selected removal action.

10.3 Unless instructed otherwise by the OSC, in writing, Nu-West shall submit to IDEQ upon submission of an EE/CA Report for each Site, any documents developed during the course of the EE/CA. Documents developed during the performance of the EE/CA include, but are not limited to, copies of plans, task memoranda, documentation of field modifications, recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports required pursuant to this CO. Nu-West also shall submit any correspondence between Nu-West and state, local, or other federal authorities concerning the performance of the EE/CA or the selection of the

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removal action for each Site. Any claim that such materials may be privileged shall be governed by Paragraphs 18.3 and 18.4 of this CO.

XI. OTHER APPLICABLE LAWS

11.1 All actions required to be taken pursuant to this CO shall be performed in accordance with the requirements of all applicable local, state, and federal laws and regulations, except that, pursuant to Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. § 300.400(e), no Federal, State, or local permit shall be required for the portion of the Work conducted entirely on-site, where such Work is carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621(e), and the NCP. Where any portion of the Work performed off-site requires a federal or state permit or approval, Nu-West shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

11.2 Compliance by Nu-West with the terms of this CO shall not relieve Nu-West of its obligation to comply with CERCLA, RCRA, EPHA, HWMA, or any other applicable local, state, or federal laws and regulations.

XII. RECORD PRESERVATION

12.1 The original or one copy of all records and documents in the possession, custody or control of Nu-West, excluding internal drafts of Deliverables, that are generated or collected pursuant to this CO shall be preserved during performance of the Work and for a minimum of ten (10) years after completion of the Work required under this CO, unless IDEQ notify Nu-West in writing that these documents may be destroyed earlier. After the expiration of this ten-year period, Nu-West shall notify IDEQ at least 60 days before the documents are scheduled to be destroyed and shall provide IDEQ with the opportunity to take possession of or copy non-privileged material.

XIII. CLAIMS AGAINST THIRD PARTIES

13.1 The Parties to this CO reserve any claims they now have, or may have in the future, against any third party including, but not limited to, claims under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, for recovery of response costs, including oversight or enforcement costs arising out of, or related to, this CO, and any future and/or past costs incurred in connection with the Site

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or this CO. Nothing in this CO shall constitute or be construed as a release from any claim, cause of action or demand against any person, firm, partnership, or corporation not a signatory to this CO for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants and/or deleterious materials found at, taken to, or taken from the Site, or from the ownership or operation of the Site or any portion thereof.

XIV. MODIFICATION OF CO PLANS OR SCHEDULES

14.1 The terms of this CO may be modified only by the written agreement of the Parties; provided, modifications to any plan or schedule may be made, in writing, by the OSC or at the OSC's direction, as provided in paragraph 31.1.

XV. THREATENED/ENDANGERED SPECIES

15.1 Nu-West shall immediately notify the OSC of any and all threatened or endangered species encountered on the Site in the course of performing activities under this CO.

XVI. COUNTERPARTS AND EFFECTIVE DATE

16.1 This CO may be executed in any number of counterparts, each of which when executed and delivered to the Forest Service OSC shall be deemed to be an original, but such counterparts shall together constitute a single, integrated document. This CO shall be effective on the date it has been signed by all the Parties and approved by the United States Attorney General or her/his designee.

XVII. ACCESS

17.1 Beginning on the effective date of this CO, the Forest Service shall permit access to the portions of the Site located on National Forest System land to Nu-West and its authorized representatives, as necessary to perform the Work required under this CO. Nu-West shall provide access to the Site and to off-Site areas under the ownership and/or control of Nu-West as may be needed to implement this CO, and shall provide access to all records and documentation related to the conditions at the Site and the actions conducted pursuant to this CO, subject to the procedures described in paragraphs 18.3 and 18.4 for documents for which Nu-West claims are privileged. Nu-West shall use its best efforts to obtain such access as may be needed, if any, to private lands not under its ownership

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and/or control that are necessary to perform the Work required under this CO. Nu-West will use its best efforts to have any access agreement that it obtains include such access by IDEQ as may be necessary for IDEQ and their authorized representatives, and for Support Agency personnel accompanied or authorized by the OSCs, to implement the terms of this CO, and shall specify that Nu-West is not the representative of IDEQ for purposes of liability associated with Site activities. Nu-West shall provide IDEQ with copies of all relevant access agreements prior to initiation of field activities on the area covered by the access agreement. To the extent that Nu-West is unable to obtain consensual access to any private lands, the United States and/or IDEQ may exercise their authorities to obtain access. All persons with access to the Site under this paragraph shall be required to comply with their approved health and safety plans. For purposes of this paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, restrictive easements, and/or an agreement to release or subordinate a prior lien or encumbrance.

XVIII. SAMPLING AND DATA AVAILABILITY

18.1 Nu-West shall notify IDEQ at least five (5) working days prior to conducting field events, including construction, excavation, drilling and sampling events. The five-day notice period may be shortened if IDEQ and Nu-West agree that this notice period would impede or prevent necessary or desirable sampling. Any Party, including its contractors, that is taking samples, will, at the request of any other Party, allow split or duplicate samples to be taken by or for the other Party of any samples collected in the course of implementing this CO.

18.2 Nu-West waives any objection to the validity and admissibility of data generated in the course of performance of Work under this CO, if such data have been collected or generated in compliance with this CO, and validated in accordance with the QA/QC procedures set forth in the SAP. Nu-West does not waive its right to object to the relevance or the interpretation of, or the conclusions to be drawn from, such validated data.

18.3 Nu-West agrees not to assert any business confidentiality claim, or attorney-client or attorney work product privilege, with respect to any analytical data relating to sampling, monitoring, or other activities required to be performed under this CO, or with respect to observations of conditions at or

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410 resulting from releases at the Site made or generated in the course of the performance of the Work
411 pursuant to this CO. Nu-West may assert a claim of business confidentiality or other privilege covering
412 any other type of information generated pursuant to the requirements of this CO, provided, in the case of
413 a business confidentiality claim only, that such claim is consistent with Section 104(e)(7) of CERCLA, 42
414 U.S.C. § 9604(e)(7), and is asserted in the manner described in 40 C.F.R. § 2.203. If no claim of
415 confidentiality or other privilege accompanies the information when it is received by IDEQ, it may be
416 made available to the public without further notice.

417 18.4 In the event Nu-West decides to withhold any document or information otherwise
418 required to be disclosed by the provisions of this CO on the basis of a claim of privilege, it shall inform
419 IDEQ of that decision and provide IDEQ with the date, author, recipient(s), title, and description of the
420 document or information withheld. Nu-West shall also identify which privilege(s) it asserts applies to the
421 document or information withheld and explain the basis for its assertion. Based on the information
422 supplied by Nu-West, IDEQ shall determine whether to accept Nu-West's claim of privilege. In the event
423 IDEQ disagrees with Nu-West's claim of privilege, Nu-West shall promptly disclose the document or
424 information previously withheld, unless Nu-West disputes IDEQ's determination by invoking the Dispute
425 Resolution provisions of Section XXII of this CO.

426 18.5 IDEQ and its authorized representatives, and Support Agency personnel accompanied or
427 authorized by the OSC, shall have the authority at all reasonable times to inspect activities at the Site.
428 IDEQ may also conduct such tests on the Site as deemed necessary and may use cameras, sound
429 recording devices, or any other equipment needed to verify data submitted or monitor activities
430 undertaken by Nu-West. Nu-West may request split or duplicate samples under paragraph 18.1 of this
431 CO and, upon request, shall also be entitled to inspect and make copies of any test results, recordings,
432 photographs, or other non-privileged information or materials generated during or as a result of the
433 inspection conducted by IDEQ Subject to the provisions in paragraph 18.4 of this CO, IDEQ and its
434 authorized representatives shall be allowed to inspect and make copies of all records, operating logs,
435 contracts, files, photographs, sampling and monitoring data, or any other non-privileged documents
436 related to the Work required under this CO. Any claim that such materials may be privileged shall be

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governed by paragraph 18.4 of this CO. Nothing herein is intended to limit or to expand in any way the right of entry or inspection authority of IDEQ or the Support Agency under CERCLA or any other applicable legal authority.

XIX. WORK STOPPAGE

19.1 IDEQ reserves the right to stop Work from proceeding, either temporarily or permanently, on any task, activity or Deliverable at any point during performance of the Work required under this CO if Nu-West materially fails to comply with the terms of this CO.

XX. EMERGENCY RESPONSE AND NOTIFICATION

20.1 If any incident, or change in Site conditions, during the Work conducted by Nu-West pursuant to this CO on the Site, causes or threatens to cause an endangerment to the public health, welfare, or the environment, Nu-West shall immediately notify the OSC of the incident or Site conditions. If the OSC is unavailable, Nu-West shall notify the EPA Region 10, Emergency Response and Site Cleanup Unit, 24 Hour Duty Officer, (206) 553-1263. If, in the course of Nu-West's performance of the Work under this CO on the Site, IDEQ determines there is an imminent and substantial endangerment to human health, welfare or the environment due to unanticipated or changed circumstances at the Site, IDEQ shall notify Nu-West in writing of modifications to the Work Plan and Specifications, and/or the Deliverables that IDEQ deems necessary to address the immediate threat. Within five working days of the receipt of such notification, Nu-West shall notify IDEQ in writing whether it agrees to perform the work required under the proposed modifications. If the parties agree in writing to the proposed modification to the Work Plan and/or the new Deliverables, the modifications to the Work Plan and Specifications and/or the new Deliverables shall become an attachment to this CO and incorporated herein.

20.2 If Nu-West does not agree to perform the Work required by the proposed modifications, IDEQ may perform the proposed Work or take any action it deems necessary, and may seek recovery of any costs it incurs performing such proposed Work pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), or other applicable law. The Parties agree that any determination by IDEQ that an immediate response at the Site is required is governed by section 113(h) and (j) of CERCLA and shall not be subject to the dispute resolution provisions in section XXII of this CO.

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20.3 Nothing in this CO shall be deemed to grant, limit or affect any authority of any agency of the United States or the State of Idaho, under any statute or agreement other than this CO, to take, direct, or order any or all appropriate action to protect human health, welfare or the environment.

XXI. ADDITIONAL INVESTIGATION AND ANALYSIS

21.1 If IDEQ determines that additional Work on the Site is required to meet the objectives of this CO and that work is not covered by section IX above, it may notify Nu-West in writing of its determination and specify any proposed changes to any Deliverable to reflect the additional Work. Within ten (10) working days of receipt of the determination of IDEQ that additional Work is required, Nu-West shall provide written notification to IDEQ, stating whether or not it agrees to perform the additional Work. If Nu-West agrees to perform the additional Work, within fifteen (15) days of its notice of agreement to IDEQ, it shall submit to IDEQ a revised Work Plan or other appropriate Deliverable describing and providing a schedule for performance of the additional Work. If both parties agree in writing to the revisions to the Work Plan and/or the new Deliverable, the revised Work Plan and/or the new Deliverable shall become an attachment to this CO and incorporated herein. Nu-West shall perform all agreed upon additional tasks, including providing any additional analytical results and reports as required by the revised Work Plan and/or the new Deliverable. If Nu-West elects not to perform the additional Work, IDEQ may perform the Work or take any action it deems necessary, and may seek recovery of any costs it incurs performing such Work pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), or other applicable law. Any determination by IDEQ that additional Work is required at the Site is governed by Section 113(h) and (j) of CERCLA and shall not be subject to the dispute resolution provisions in Section XXII of this CO.

21.2 If after collection of the initial data provided in the SI Work Plan, the OSC determines that additional data is needed, consistent with the SOW, the OSC may request that Nu-West proceed with the draft and final SI Report, with the condition that Nu-West will supplement the SI Report with the additional data collected under a modified SI Work Plan. In addition, if prior to the completion of the SI Work Plan, IDEQ determines that sufficient data has been collected with respect to a particular position or issue, then IDEQ may accelerate the SI report and EE/CA process with respect to that particular portion or issue.

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492 The OSC's election to undertake this approach may result in two or more EE/CAs, the combination of
493 which will address all pathways for the release or threatened release of hazardous substances, pollutants
494 and deleterious materials at the Site. Nu-West will complete the initial EE/CAs on the schedule provided
495 in the SOW. Nu-West will complete the subsequent EE/CAs on a schedule provided in a revised EE/CA
496 Work Plan.

497 XXII. DISPUTE RESOLUTION

498 22.1 The dispute resolution procedures in this Section are the exclusive mechanism for
499 resolving disputes arising under this CO. A dispute shall be considered to have arisen when Nu-West
500 serves IDEQ with a written Notice of Dispute. A Notice of Dispute shall be served by facsimile, overnight
501 mail, or some equivalent service.

502 22.2 In the first instance, the Parties shall attempt to resolve any dispute arising under this CO
503 by informal negotiations. The period for informal negotiations shall not exceed thirty (30) days from the
504 date of receipt of the Notice of Dispute, unless IDEQ and Nu-West agree in writing to modify the period
505 for informal negotiations. If the Parties fail to resolve the dispute informally, the formal dispute resolution
506 procedure in the following Paragraphs shall apply.

507 22.3 In the event the Parties cannot resolve the dispute through informal negotiations, then the
508 position of IDEQ shall be binding unless, within seven (7) days after the conclusion of the informal
509 negotiations period, Nu-West invokes the formal dispute resolution procedures of this section by serving
510 on IDEQ a written Statement of Position on the matter in dispute. Nu-West's written Statement of
511 Position shall be sent by facsimile, overnight mail, or some equivalent service, and shall define the
512 dispute and state the basis of Nu-West's objections to the position of IDEQ.

513 22.4 Following receipt of Nu-West's Statement of Position, IDEQ shall promptly provide the
514 appropriate supervisory office with a copy of Nu-West's Statement of Position and a written response to
515 that Statement. IDEQ shall simultaneously send its response to Nu-West by facsimile, overnight mail or
516 some equivalent service. The appropriate supervisory office is the the Director of the Department of
517 Environmental Quality for IDEQ, the Snake River Basin Office Supervisor for USFWS and the Region 10
518 Regional Administrator for EPA (disputes over FWS/EPA costs).

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22.5 Following receipt of Nu-West's Statement of Position and IDEQ's response, the appropriate supervisory office shall make a final determination resolving the matter in dispute.

22.6 Any decision made by the USFWS or EPA pursuant to this section shall not constitute a final agency action subject to judicial review unless and until the United States commences a judicial action to enforce this CO, in which case any challenge to the Supervisor's or Regional Administrator's final determination shall be subject to the Administrative Procedures Act, 5 U.S.C. §§ 702 et seq., or Section 113(j) of CERCLA, 42 U.S.C. § 9613(j).

22.7 Any decision made by the IDEQ pursuant to this section shall not constitute a final agency action subject to judicial review unless and until the IDEQ commences a judicial action to enforce this CO, in which case any challenge to the Director's final determination shall be subject to the Idaho Administrative Procedures Act, Idaho Code § 67-5273.

22.8 Nothing in this CO precludes the parties from agreeing to use other forms of alternative dispute resolution in lieu of the procedures described in paragraphs 22.3 – 25.5.

22.9 Upon completion of all dispute resolution procedures under this section, Nu-West shall proceed in accordance with the final determination regarding the matter in dispute. If Nu-West does not perform any required Work in accordance with the final determination, IDEQ may perform the Work and/or pursue any other appropriate relief, including judicial enforcement of this CO pursuant to Idaho Code § 39-108, Section 122(d)(3) of CERCLA, 42 U.S.C. § 9622(d)(3), and cost recovery pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) or other applicable law.

22.10 The invocation of the dispute resolution provisions of this CO shall not extend, postpone or affect in any way any unrelated obligation of Nu-West under this CO not directly in dispute, unless the Forest Service agrees in writing otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of the CO. In the event Nu-West does not prevail on the disputed matter, stipulated penalties shall be assessed and paid as provided in Section XXVI, unless otherwise agreed by the parties in writing.

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XXIII. FORCE MAJEURE

23.1 Delays or inability to perform any of the requirements of the CO within the time limits prescribed shall not be a violation of the CO where performance is prevented or delayed by a force majeure event. Force majeure is defined as any event arising from causes beyond the control of Nu-West, of any entity controlled by Nu-West, or of Nu-West's contractors, that delays or prevents performance of any obligation under this CO, despite Nu-West's best efforts to fulfill the obligation. Force majeure does not include the financial inability of Nu-West to complete performance of the obligation or increased cost of performance. Nu-West shall have the burden of proving force majeure by a preponderance of the evidence.

23.2 If any event occurs that may materially delay performance of any obligation under this CO or submittal of any Deliverable past the applicable deadline, Nu-West shall notify the OSC within twenty-four (24) hours of the time Nu-West knew that the event would delay such performance or submittal. Within five (5) business days thereafter, Nu-West shall notify IDEQ in writing of the reasons for the delay, its anticipated length, measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with these requirements shall waive any claim of force majeure by Nu-West.

23.3 The OSC shall notify Nu-West in writing of the determination by IDEQ as to whether force majeure applies to the event or circumstances within seven (7) days after receipt of written notice from Nu-West. If IDEQ determines that the delay has been or will be caused by circumstances constituting a force majeure, the due date for each uncompleted task in this CO shall be extended for a sufficient period to complete the tasks that were delayed or prevented. Such period shall be at least equal to the delay resulting from the force majeure circumstance. If IDEQ disagrees with Nu-West's force majeure claim, or if there is no agreement on the length of an extension of time, the dispute shall be resolved in accordance with the dispute resolution provisions in Section XXII of this CO or the stipulated penalties provisions of Section XXVI, as appropriate.

XXIV. REIMBURSEMENT OF RESPONSE COSTS

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572 24.1 Except as specified in this section XXIV, this AOC does not address or resolve

573 claims that the United States, the Forest Service or other federal agencies may have against Nu-West, or
574 that Nu-West may have against the United States, the Forest Service or other federal agencies, including
575 claims under Section 107 and 113 of CERCLA, for the recovery of costs incurred by the United States, the
576 Forest Service, other federal agencies, or Nu-West in responding to the release or threatened release of
577 hazardous substances at the Site, including but not limited to costs incurred in performing the Work
578 pursuant to this AOC. Each Party hereto expressly reserves any such claims and expressly reserves any
579 defenses it may have to such claims.

580 24.2. Nu-West shall pay response costs incurred by EPA for the entire Site in

581 connection with the implementation of the AOC/CO. "Response costs," for the purposes of this section
582 XXIV only, shall mean all direct and indirect costs incurred in connection with oversight and review of the
583 Work performed under this AOC/CO as set forth and described in the SOW, including, but not limited to,
584 time and travel costs associated with oversight of the work performed under the SOW; contractor costs;
585 compliance monitoring, including the collection and analysis of split samples; site visits; discussions
586 regarding disputes that may arise under this AOC/CO; review and approval or disapproval of reports; and
587 any other costs directly incurred in overseeing this AOC/CO.

588 24.3 EPA has incurred Response Costs in the amount of \$_____ through

589 _____, 2003 ("Past Costs"). EPA shall submit a bill to Nu-West for Past Costs that includes a
590 SCORPIOs report or other accounting certified by EPA. Nu-West shall, within thirty (30) days of receipt of
591 the bill, remit payment of the bill in accordance with the provisions of sections 24.3.2 - 24.3.4, below.

592 Response costs incurred by EPA after_____, will be reimbursed in the following
593 manner:

594 24.3.1 EPA shall separately submit to Nu-West, on a periodic basis, a bill
595 for Future Costs that includes a SCORPIOs report or other accounting certified by EPA.

596 24.3.2 Nu-West, within thirty (30) days of receipt of each bill, shall remit
597 payment for the amount of the stated costs.

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598 24.3.3 Nu-West shall make all payments of EPA response costs by
599 certified or cashier's check, or by wire transfer. Checks shall be made payable to the EPA Hazardous
600 Substance Superfund, shall reference Nu-West's name and address, include the name of the Site, and
601 shall be mailed to Mellon Bank, EPA Region 10 - Superfund Accounting, P.O. Box 360903M, Pittsburgh,
602 Pennsylvania 15251.

603 24.3.4 At the time of payment, Nu-West shall send notice that payment has
604 been made to Attn: Ruth Broome, Financial Management Officer (Mail Code: OMP-146), US EPA Region
605 10, 1200 Sixth Avenue, Seattle, Washington 98101.

606 24.3.5 The total amount to be paid by Nu-West pursuant to this section shall
607 be deposited in the Georgetown Canyon Phosphate Mine Site Special Account within the EPA Hazardous
608 Substance Superfund to be retained and used to conduct or finance response actions at or in connection
609 with the Site.

610 24.4 Nu-West hereby agrees to commit the sum of up to _____ dollars
611 (\$_____) per year to pay FWS' reasonable Costs. "Costs," for the purposes of this paragraph, shall
612 mean all direct and indirect costs incurred in connection with FWS' support of Work performed by or on
613 behalf of IDEQ under this CO, as set forth and described in the SOW, including, but not limited to, time
614 and travel costs associated with oversight of the work performed under the SOW; contractor costs;
615 compliance monitoring, including the collection and analysis of split samples; site visits; discussions
616 regarding disputes that may arise under this CO; review and approval or disapproval of reports; and any
617 other costs directly incurred in overseeing this CO. Within 180 days of the effective date of this CO, FWS
618 will send Nu-West a bill for Past Costs that includes a cost summary. "Past Costs" shall mean all Costs
619 incurred by FWS prior to the effective date of this CO. FWS and Nu-West have agreed to settle all Past
620 Costs for \$_____ or the amount stated in the cost summary, whichever is less. No later than
621 December 1 of each year, FWS shall submit to Nu-West an estimated annual Cost budget. Within 30
622 days of receipt of the estimated annual budget, Nu-West shall deposit with the FWS an amount equal to
623 the estimated annual budget or \$15,000, whichever is less.

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624 24.4.1 The FWS shall use such monies to establish an account fund
625 dedicated solely to its activities associated with this CO, in accordance with the Appropriations Act for the
626 Department of the Interior and Related Agencies of 2000, Pub. L. 106-113, 113 Stat. 150, and other
627 applicable statutes, regulations and guidance. Within 180 days of the execution of this AOC/CO, and
628 every 180 days thereafter, the FWS shall provide Nu-West an accounting of its costs, including
629 supporting cost summaries.

630 24.4.2 Payments to FWS shall be made by certified or cashier's check
631 made payable to the United States Fish and Wildlife Service and mailed to:

632 U.S. Fish & Wildlife Service
633 ATTN: Debra Freeman
634 911 N.E. 11th Avenue
635 Portland, OR 97232-4181
636

637 Each check shall reference:

638 Site Name: Southeast Idaho Phosphate Mining - Smoky Canyon AOC
639

640 24.4.3 Within 120 days after completion of FWS support activities under this
641 AOC/CO, FWS shall provide Nu-West with a final cost accounting. In the event that the monies remain in
642 the Fund, the FWS shall reimburse Nu-West within 30 days of submission of the final cost accounting.
643

24.5 Nu-West may dispute payment of any portion of EPA's and/or FWS's response costs, but only on the basis of accounting errors, the inclusion of Area A costs inconsistent with the NCP, the inclusion of costs outside the scope of this AOC/CO, or the inclusion of costs that have not been paid or approved for payment by EPA and/or FWS. Disputes regarding EPA and/or FWS response costs will be resolved using the dispute resolution procedures described in section XXII, provided, for such disputes EPA and FWS will have, for their respective costs, the authorities and responsibilities under these procedures otherwise allocated to the Lead Agency. Any objection by Nu-West shall be made in writing within forty-five (45) days of receipt of the cost summary and shall specifically identify the disputed costs and the basis of the dispute. Disputed costs shall be paid by Nu-West into an escrow account while the dispute is pending. All undisputed costs shall be remitted by Nu-West in accordance with the provisions in the preceding paragraphs of this Section. In any Dispute Resolution proceeding, Nu-West shall bear the burden of establishing its contentions as to an EPA accounting error, or the inclusion of costs inconsistent with the NCP, the inclusion of costs outside the scope of this AOC/CO, or the inclusion of costs that have not been paid or approved for payment by EPA and/or FWS. If the EPA and/or FWS prevail in the Dispute Resolution proceeding, Nu-West shall remit the amount(s) in question, including any applicable interest, within 30 days after receipt of the final determination.

24.6 In the event that payment for response costs is not made within forty-five (45) days of receipt of each accounting, Nu-West shall pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. 9607(a). The interest to be paid on response costs shall begin to accrue on the date of Nu-West's receipt of the accounting. Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Nu-West's failure to make timely payments under this section.

XXV. REIMBURSEMENT OF STATE RESPONSE COSTS

25.1 Response costs incurred by IDEQ with respect to the Site under this AOC/CO will be reimbursed in the following manner:

25.1.1 Nu-West will pay the sum of Ten Thousand Dollars (\$10,000) to IDEQ to be deposited in an account established for this site.

25.1.2 Thereafter, IDEQ shall provide a quarterly accounting and invoice to Nu-West of actual response costs incurred by IDEQ.

25.1.3 Within 30 days of Nu-West's receipt of the IDEQ's quarterly accounting invoice, Nu-West shall reimburse the State for all costs reflected in the accounting invoice.

25.1.4 The initial deposit will be returned to Nu-West within sixty (60) days of the date IDEQ incurs final response costs.

25.2 IDEQ response costs shall include IDEQ costs incurred after_9-3-02.

25.3 All payments necessary to IDEQ shall be made to:

Administrative Services-Accounts Receivable
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706-1255

25.4 Nu-West may dispute payment of any portion of IDEQ's response costs, but only on the basis of accounting errors, the inclusion of costs outside the scope of this AOC/CO, the inclusion of costs inconsistent with State regulations or the inclusion of costs that have not been paid or approved for payment by IDEQ. Disputes regarding oversight costs will be resolved using the dispute resolution procedures described in Section XXII. Any objection by Nu-West shall be made in writing within forty-five (45) days of receipt of the Quarterly Billing and shall specifically identify the disputed costs and the basis of the dispute. All undisputed costs shall be remitted by Nu-West in accordance with the provisions in the preceding paragraphs of this section. In any Dispute Resolution proceeding, Nu-West shall bear the burden of establishing its contentions as to inappropriate costs. If the IDEQ prevails in the Dispute Resolution proceeding, Nu-West shall remit the amount(s) in question, including any applicable interest, within 30 days after receipt of

the final determination.

XXVI. STIPULATED PENALTIES

26.1 Unless there has been a written modification of a compliance date or other requirement of this CO by IDEQ, or a force majeure event as defined herein, in the event Nu-West fails to meet any requirement of this CO, Nu-West shall pay stipulated penalties in the amount of \$1,000 per day, per violation for the 1st through 14th days of noncompliance; \$3,000 per day, per violation for the 15th through 30th day of noncompliance; and \$7,500 per day, per violation for the 31st day of noncompliance and every day thereafter. Compliance by Nu-West shall include complete and timely performance of each activity required under this CO including but not limited to reimbursement of response costs pursuant to Section XXIV and XXV, or complete and timely performance of all Work described in any plan, statement or Deliverable approved under this CO.

26.2 All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission of a Deliverable under Section IX (Work to be Performed), during the period, if any, beginning on the 11th day after IDEQ's receipt of such submission until the date that IDEQ notifies Nu-West of any deficiency; and (2) with respect to a matter subject to Dispute Resolution (Section XXII), during the period, if any, beginning on the 11th day after the Negotiation Period begins until the date that IDEQ issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this CO.

26.3 IDEQ will advise Nu-West in writing of any stipulated penalties owed by Nu-West pursuant to this section. All penalties shall be paid by certified or cashier's check within thirty (30) days of the date of receipt of the demand for payment, unless Nu-West has properly disputed such demand or related notice of violation. Interest shall begin to accrue on the unpaid balance at the end of the thirty (30) day period. Interest shall accrue at the rate provided in applicable law. Payment shall be made in accordance with instructions provided by IDEQ.

26.4 The stipulated penalties provided for in this section of the CO shall be the exclusive monetary penalty for violations of this CO that are not also violations of federal or state statutes or regulations. The provisions in this section, however, do not preclude the United States or IDEQ from pursuing any other remedies or sanctions that may be available by reason of Nu-West's failure to comply with any of the requirements of this CO, nor shall payment of stipulated penalties relieve Nu-West of the responsibility to comply with any requirement of this CO. Except for stipulated penalties associated with non-payment of response costs pursuant to Section XXIV and notwithstanding any other provision of this section, IDEQ may, in its unreviewable discretion, waive any portion of the stipulated penalties that have accrued pursuant to this CO.

XXVII. OTHER CLAIMS

27.1 By entering into this CO, the Federal Agencies and IDEQ assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Nu-West. No Party shall be deemed to be a party to any contract entered into by any other Party, Nu-West or its contractors, to carry out actions pursuant to this CO.

27.2 Nu-West hereby covenants not to sue and agrees not to assert any cause of action or claim arising out of any action performed under this CO against the United States for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507), pursuant to Sections 106(b)(2), 107, 111, 112, 113 of CERCLA or any other provision of law.

XXVIII. RESERVATION OF RIGHTS

28.1. Except as expressly provided in this CO, the United States and the State of Idaho, reserve all rights, claims and defenses each may have, including the right to bring an action against Nu-West under Section 107 and 113 of CERCLA, 42 U.S.C. § 9607 and 9613, or Idaho Code §§39-108(3)(a)(v) and 39-4413(A)(1)(d), for recovery of any unreimbursed response costs incurred in connection with the Site. Nothing in this CO shall be construed as releasing Nu-West from liability, if any, for its actions. The United States and the State of Idaho reserve the right to take any enforcement action pursuant to CERCLA or any other legal authority for relief,

including, but not limited to, injunctive relief, monetary penalties, and punitive damages for any violation of this CO, except as provided in paragraph 26.4. Furthermore, nothing in this CO shall be construed to limit the power and authority of the United States to take, direct, or order all actions necessary to protect the public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants at or from the Site.

28.2 Except as expressly provided in this CO, Nu-West reserves all rights, claims and defenses it may have, including the right to bring an action against the United States or the State of Idaho under CERCLA for recovery of any response costs incurred in connection with the Site under Sections 113 and 120 of CERCLA. Except as expressly provided in paragraph 29.1 below, nothing in this CO shall be construed as releasing the United States from any liability for any of its actions. Nu-West also reserves any defense that may be asserted by law in response to any enforcement action taken pursuant to the United States' reservation of rights in paragraph 28.1.

28.3 Nu-West reserves, and this CO is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States' Code for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 USC 2671; nor shall any such claim include a claim based on the United States' selection of response actions, or the oversight or approval of Nu-West's plans or activities. The foregoing applies only to claims, which are brought pursuant to a statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

28.4 The IDEQ expressly reserves the right to seek further relief to address contamination or pollution resulting from the matters addressed herein. Nothing herein shall be

deemed to bar such further relief and this agreement shall not operate pursuant to Idaho Code 39-108(3)(a)(v) to preclude the IDEQ from seeking additional relief.

28.5 Except as expressly provided in this CO, the IDEQ reserves all rights, claims and defenses it may have, including the right to bring an action against Nu-West under Section 107 and 113 of CERCLA, 42 U.S.C. § 9607 and 9613, or Idaho Code 39-108(3)(a)(v) and 39-4413(A)(1)(d) for recovery of any unreimbursed response costs incurred in connection with the Site. Nothing in this CO shall be construed as releasing Nu-West from liability, if any, for its actions. The IDEQ reserves the right to take any enforcement action pursuant to CERCLA or any other legal authority for relief, including, but not limited to, injunctive relief, monetary penalties, and punitive damages for any violation of this CO, except as provided in paragraph 26.4. Furthermore, nothing in this CO shall be construed to limit the power and authority of the IDEQ to take, direct, or order all actions necessary to protect the public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants at or from the Site.

28.6 Except as expressly provided in this CO, Nu-West reserves all rights, claims and defenses it may have, including the right to bring an action against the IDEQ under CERCLA for recovery of any response costs incurred in connection with the Site. Except as expressly provided in paragraph __ above, nothing in this CO shall be construed as releasing the IDEQ from any liability for any of its actions. Nu-West also reserves any defense that may be asserted by law in response to any enforcement action taken pursuant to the IDEQ's reservation of rights in this section.

28.7 Nu-West reserves, and this CO is without prejudice to, claims against the IDEQ, subject to the provisions of the Idaho Code, respectively, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the IDEQ while acting within the scope of his/her office or employment under circumstances where IDEQ, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person,

including any contractor, who is not a state employee; nor shall any such claim include a claim based on IDEQ's selection of response actions, or the oversight or approval of Nu-West's plans or activities. The foregoing applies only to claims, which are brought pursuant to a statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

XXIX. INDEMNIFICATION

29.1 Nu-West agrees to indemnify and hold the United States and the State of Idaho and their agencies, departments, agents and employees, harmless from all claims of third parties arising from acts or omissions of Nu-West or those acting on its behalf, including its officers, employees, agents, contractors, subcontractors, or assigns, in carrying out activities under this CO. Nu-West has an affirmative duty to protect from injury and damage the lands of the United States affected by the contamination at or from the Site. Damage includes, but is not limited to, fire suppression costs and all costs and damages associated with restoration or rehabilitation of natural resources associated with Nu-West's activities on the Site. Nu-West shall be liable for damage to all roads and trails of the United States caused by the use of Nu-West, or those acting on its behalf, except that damage shall not include reasonable and ordinary wear and tear.

XXX. NOTICE OF COMPLETION

30.1 Upon completion of all requirements under this CO, Nu-West shall certify in writing to IDEQ that all requirements under this CO, including any additional Work and payment of stipulated penalties, have been completed. The certification shall be signed by a representative of Nu-West with the requisite knowledge and authority, and shall include the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete." If IDEQ agrees with Nu-West's certification it will so notify Nu-West in writing and this CO, with the exception of any continuing obligations, shall be terminated, with respect to the Area certified. For the purposes of this section, continuing obligations shall include, but not be limited to, the following obligations contained in this CO: Section XII (Record Preservation), Section XXVIII (Reservation of Rights) and Section XXX (Indemnification). If IDEQ determines that any requirements of this CO have not been completed by Nu-West, they will

notify Nu-West in writing and specify the deficiencies. Nu-West shall correct such deficiencies in accordance with the notice of IDEQ. Failure by Nu-West to correct such deficiencies shall be a violation of this CO.

XXXI. MODIFICATION

31.1 Modification to any plan or schedule may be made, in writing, by the OSC or at the OSC's direction. If the OSC makes an oral modification, it will be memorialized in writing within 10 days; provided, however, that the modification effective date shall be the date of the OSC's oral direction.

XXXII. MISCELLANEOUS

32.1 During the performance of this CO, Nu-West agrees that in connection with the performance of Work under this CO, Nu-West shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age or handicap. Nu-West shall include and require compliance with the above nondiscrimination provision in any contract or subcontract made with respect to this CO. IDEQ shall have the right to enforce the foregoing nondiscrimination provisions by suit for specific performance or any other remedy under the laws of the United States or the state in which the breach or violation occurs.

~~32.2~~ If, while implementing the terms of this CO, Nu-West discovers any objects of historic or scientific interest, it shall notify the OSC and leave such discoveries intact until and unless otherwise instructed by the OSC. For the purposes of this paragraph, objects of historic or scientific interest include, but are not limited to, historic or prehistoric ruins, fossils, or artifacts. Compliance with any protective and mitigative measures specified by the OSC shall be Nu-West's responsibility.

Nu-West's Georgetown Canyon Phosphate Mine Site
Administrative Order on Consent/Consent Order

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE REGION 4

By: _____

Name: _____

Title: Regional Forester

Date: _____

Nu-West's Georgetown Canyon Phosphate Mine Site
Administrative Order on Consent/Consent Order

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

By: _____

Name: _____

Title: _____

Date: _____

Nu-West's Georgetown Canyon Phosphate Mine Site
Administrative Order on Consent/Consent Order

On behalf of the United States, and its agencies signatory hereto, I approve and concur in this Administrative Order on Consent/Consent Order involving the Nu-West's Georgetown Canyon Phosphate Mine Site.

Date: _____

(insert name)
Assistant Attorney General
Environment and Natural
Resources Division
U.S. Department of Justice

Nu-West's Georgetown Canyon Phosphate Mine Site
Administrative Order on Consent/Consent Order

IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY

By: _____

Name: _____

Title: _____

Date: _____

Nu-West's Georgetown Canyon Phosphate Mine Site
Administrative Order on Consent/Consent Order

Nu-West Company

By: _____

Name: _____

Title: _____

Date: _____